

Message Text

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ORIGIN EUR-12

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CIEP-02 COME-00 DODE-00 EB-07 FPC-01 H-02 INR-07
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OES-06 SP-02 SS-15 STR-04 TRSE-00 ACDA-10 CEQ-01
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OES:HSPIELMAN
CORPS:CHPAQUETTE

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FM SECSTATE WASHDC
TO AMEMBASSY OTTAWA

UNCLAS STATE 310608

E.O. 11652: N/A

TAGS: SENV, CA

SUBJECT: DRAFT LETTER TO IJC ON LAKE SUPERIOR CONTROL
ORDERS

REF: STATE 300740

1. EMBASSY IS REQUESTED TO DELIVER FOLLOWING DRAFT LETTER
TO EXTAFF (BRADY) AS PROMISED PARA 2(A) REFTEL. PLEASE
EMPHASIZE THAT CANADIAN COMMENTS WOULD BE WELCOME AS SOON
AS POSSIBLE.

2. BEGIN TEXT: DEAR MR. BULLARD: I WRITE IN RESPONSE TO
THE COMMISSION'S DECLARATIONS IN THE RECENT REPORT ENTITLED
FURTHER REGULATION OF THE GREAT LAKES, AS CLARIFIED BY YOUR
LETTER OF NOVEMBER 2, CONCERNING THE JURISDICTION OF THE
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COMMISSION IN THE MATTER OF PROCEEDING TO A FORMAL AMEND-
MENT OF THE ORDERS OF APPROVAL GOVERNING THE LAKE SUPERIOR
CONTROL WORKS IN THE ST. MARY'S RIVER SO AS TO REFLECT THE
REGULATORY OBJECTIVE ENUNCIATED IN THE SPECIAL INTERIM
REPORT OF 1973.

AS THE COMMISSION IS AWARE, BOTH GOVERNMENTS REMAIN SUPPORTIVE OF THE EMERGENCY REGULATION REFLECTIVE OF THIS OBJECTIVE WHICH WAS DIRECTED BY THE COMMISSION IN JANUARY

OF 1973 AND SINCE CONTINUED IN RESPONSE TO CONCERN IN BOTH COUNTRIES REGARDING THE CRITICALLY HIGH LEVELS ON THE GREAT LAKES. THE TWO GOVERNMENTS APPRECIATE THE COMMISSION'S VIEWS ON THE CONTINUING NATURE OF THE EMERGENCY SITUATION UNDERLYING THE COMMISSION'S DIRECTIVE SET FORTH IN YOUR LETTER.

BY JOINT REFERENCE OF EVEN DATE, THE GOVERNMENTS OF THE US AND CANADA HAVE CHARGED THE COMMISSION WITH FOLLOW-ON ACTIVITY IN LIGHT OF ITS REPORT, WHICH INCLUDES EXAMINATION OF A REFINED PLAN OR PLANS FOR REGULATION OF LAKE SUPERIOR WITH A VIEW TOWARDS PERMANENT IMPLEMENTATION OF THE OBJECTIVE OUTLINED IN THE 1973 SPECIAL INTERIM REPORT. THE GOVERNMENTS CONCUR THAT CONSIDERATION OF FORMAL AMENDMENT OF THE GOVERNING ORDERS TO REFLECT THIS OBJECTIVE, ENDORSED BY THE GOVERNMENTS, WOULD BE APPROPRIATE, AND, FURTHER, RECOGNIZE THAT THIS MIGHT PROCEED NOTWITHSTANDING THAT A REFINED PLAN OF REGULATION REMAINS TO BE DEVELOPED, ON THE ASSUMPTION THAT AN AMENDED ORDER MIGHT SUITABLY PROVIDE THEREFOR.

IN THIS REGARD, THE TWO GOVERNMENTS WISH TO INFORM THE COMMISSION THAT THEY DO NOT INTEND AT THE PRESENT TIME TO INITIATE ACTION TO CAUSE SUCH FORMAL AMENDMENT. SUCH ACTION ON THE PART OF THE USG WOULD REQUIRE PREPARATION OF AN ENVIRONMENTAL IMPACT STATEMENT AND THE ENACTMENT OF UNCLASSIFIED

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LEGISLATION CLARIFYING APPLICABLE DOMESTIC LAW SO AS TO FACILITATE PERMANENT IMPLEMENTATION OF THE REGULATORY OBJECTIVE. THE COMMISSION IS AWARE THAT USG ACTION IN RESPONSE TO THE 1973 REPORT WOULD NECESSARILY AWAIT SUCH DEVELOPMENTS. PROPOSED LEGISLATION FOR THIS PURPOSE WAS UNSUCCESSFULLY INTRODUCED BY THE ADMINISTRATION IN THE 94TH CONGRESS, AND WE ANTICIPATE THAT IT MAY BE REINTRODUCED IN THE NEW CONGRESS.

(GOC COMMENTS TO BE INSERTED AS APPROPRIATE.)

WITH RESPECT TO THE JURISDICTION OF THE COMMISSION TO PROCEED ITSELF TO FORMAL AMENDMENT IN LIGHT OF THE CONCERNS IN BOTH COUNTRIES AT EXTREME LEVEL CONDITIONS, AND THE VIEWS OF THE TWO GOVERNMENTS, THE GOVERNMENTS GENERALLY CONCUR IN THE COMMISSION'S STATEMENT OF THE CONTINUING NATURE OF ITS JURISDICTION CONTAINED IN YOUR LETTER. I WOULD NOTE THE VIEWS EXPRESSED BY THE USG IN A SUBMISSION

OF SEPTEMBER 24, 1974, REGARDING AN ANALOGOUS JURISDICTION-
AL QUESTION ARISING IN PROCEEDINGS UNDER DOCKET 46. IF
THE COMMISSION WERE TO INITIATE A PROCESS OF AMENDMENT,
THE GOVERNMENTS WOULD EXPECT THAT THE COMMISSION WOULD
PROCEED CONSISTENT WITH THE PROVISIONS OF THE BOUNDARY

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WATERS TREATY OF 1909, AND WITH ITS RULES OF PROCEDURE, IN
PARTICULAR AFFORDING ADEQUATE OPPORTUNITIES AS THEREIN
CONTEMPLATED FOR PUBLIC REVIEW AND COMMENT.

I UNDERSTAND A LETTER EXPRESSING A SIMILAR CONCLUSION IS
BEING SENT TO THE CANADIAN SECTION BY THE DEPARTMENT OF
EXTERNAL AFFAIRS. VERY TRULY YOURS, RICHARD D. VINE.
KISSINGER

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NNN

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Margaret P. Grafeld
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